

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE MIDDLE DISTRICT OF ALABAMA
 3 EASTERN DIVISION

4
 5 DAVID DAVIS,
 6 Plaintiff,
 7 vs. CASE NO. 3:06-CV-0054-VPM
 8 CITY OF PHENIX CITY, ALABAMA,
 9 et al.,
 10 Defendants.

11 *****
 12
 13 DEPOSITION OF ROLAND LEROY WATERS, taken
 14 pursuant to stipulation and agreement before Shannon
 15 M. Williams, Certified Court Reporter and
 16 Commissioner for the State of Alabama at Large, in
 17 the offices of City Hall, 601 12th Street, Phenix
 18 City, Alabama, on Wednesday, April 4, 2007,
 19 commencing at approximately 1:47 p.m. EST.
 20
 21 *****

22 APPEARANCES
 23
 24 FOR THE PLAINTIFF:
 25

1 THOMAS A. WOODLEY
 2 Woodley & McGillivray
 3 125 13th Street N.W.
 4 Suite 400
 5 Washington, D.C. 20005.

6 FOR THE DEFENDANTS:

7 JAMES P. GRAHAM, JR.
 8 125 13th Street
 9 P.O. Box 3380
 Phenix City, Alabama 36868-3380

10 JAMES P. MCKOON, JR.
 11 McKoon & Thomas
 12 925 Broad Street
 13 P.O. Box 3220
 Phenix City, Alabama 36868-3220

14 ALSO PRESENT:

15 David Davis
 16 H. Roberts
 Wallace Hunter

CONDENSED

 COPY

1 STIPULATIONS

2 It is hereby stipulated and agreed by and
 3 between counsel representing the parties that the
 4 deposition of ROLAND LEROY WATERS is taken pursuant
 5 to the Federal Rules of Civil Procedure and that
 6 said deposition may be taken before Shannon M.
 7 Williams, Certified Court Reporter and Commissioner
 8 for the State of Alabama at Large, without the
 9 formality of a commission; that objections to
 10 questions other than objections as to the form of
 11 the questions need not be made at this time but may
 12 be reserved for a ruling at such time as the
 13 deposition may be offered in evidence or used for
 14 any other purpose as provided for by the Federal
 15 Rules of Civil Procedure.

16 It is further stipulated and agreed by and
 17 between counsel representing the parties in this
 18 case that said deposition may be introduced at the
 19 trial of this case or used in any manner by either
 20 party hereto provided for by the Federal Rules of
 21 Civil Procedure.

22 *****

23 ROLAND LEROY WATERS
 24
 25

1 The witness, having first been duly sworn
 2 or affirmed to speak the truth, the whole truth and
 3 nothing but the truth, testified as follows:

4 THE REPORTER: Usual stipulations?

5 MR. GRAHAM: We do want to read and sign.

6 EXAMINATION

7 BY MR. WOODLEY:

8 Q. Mr. Waters, could you state your full name
 9 for the Record?

10 A. Roland Leroy Waters.

11 Q. Mr. Waters, my name is Tom Woodley. I'm
 12 one of the attorneys representing the plaintiff,
 13 David Davis, in this federal court action brought
 14 against the city and yourself and others. If at any
 15 time you don't hear or understand one of my
 16 questions in your deposition, stop me right away.
 17 I'll be more than happy to repeat or rephrase the
 18 question. Do you understand that?

19 A. Yes, sir.

20 Q. Have you ever had your deposition taken
 21 before in another case?

22 A. One time.

23 Q. What was the nature of that suit, if you
 24 remember?

1 A. A lawsuit involving the Columbus EMS
2 against the City of Columbus concerning an FLSA
3 issue.
4 Q. Okay. Have you had an opportunity to spend
5 at least some time with the city attorneys
6 concerning the nature of this lawsuit?
7 A. We met Monday for a few minutes, but that
8 was it.
9 Q. Okay. And did they explain to you the
10 nature of the procedures we'll be following in the
11 deposition so you're comfortable about what we're
12 going to do this afternoon?
13 A. Yes, sir.
14 Q. And like you were asked before we went on
15 the record, you'll have to give me verbal responses
16 so there can be an adequate record made of what we
17 discuss. Do you understand that?
18 A. Yes.
19 Q. And then, lastly, this reporter will have
20 an opportunity to put your testimony and what is
21 said today in a transcript form and you'll have a
22 chance to review and sign that. Do you understand
23 that?
24 A. Yes, sir.
25 Q. And, of course, most importantly, you've

1 been sworn under oath now so you're obligated under
2 the potential penalty of perjury to tell the truth.
3 Do you understand that?
4 A. Yes, sir.
5 Q. Are you currently employed?
6 A. No, sir.
7 Q. Are you retired?
8 A. Yes, sir.
9 Q. And from what job did you retire?
10 A. Columbus Fire Emergency Medical Services.
11 Q. And how long did you work for the city's
12 fire department?
13 A. Thirty-two years and eight months, I
14 believe -- or ten months.
15 Q. Do you remember the year when you started
16 here?
17 A. I started in my other job -- here in Phenix
18 City or my other job?
19 Q. Yes, here.
20 A. December 2005. December 19, 2005, to be
21 exact.
22 Q. Okay. So -- I'm sorry -- maybe I didn't
23 understand your earlier response. You started
24 working here in the city fire department in 2005?
25 A. Yes, sir.

5
1 Q. Okay. And you were a chief, in a chief
2 position?
3 A. Deputy Chief here.
4 Q. And what was the previous fire department?
5 A. Columbus, Georgia Fire and Emergency
6 Medical Services.
7 Q. Right across the river?
8 A. Yes, sir.
9 Q. And when you were in the Columbus Fire
10 Department, did you work yourself up the rank
11 structure?
12 A. Yes, sir.
13 Q. What was the highest position you held when
14 you left the Columbus Fire Department?
15 A. Chief of the department.
16 Q. And when did you retire from the Phenix
17 City Fire Department?
18 A. February 2nd of this year.
19 Q. Okay. And you're not doing anything now in
20 terms of employment?
21 A. No, sir.
22 Q. When you were Deputy Chief here in the
23 Phenix City Fire Department, what were your basic
24 duties and responsibilities?
25 A. Managing the Operations Division of the

6
1 department.
2 Q. Mr. Waters, we have in front of you a
3 binder containing various papers and exhibits, and
4 we've got them tabbed with numbers on the right-hand
5 side to expedite the deposition. The attorneys
6 representing you and the city have a full set of
7 those exhibits as well. When I invite you to review
8 those documents, if you want to take as long as you
9 would like to review those to yourself before I ask
10 questions, feel free to do so.
11 Let me invite, first of all, your attention to
12 Exhibit 7, which appears to be a city job
13 description of the job that you held, which was
14 Deputy Fire Chief of Operations. Are you familiar
15 with this job description at all?
16 A. Yes, sir.
17 Q. And as far as you know, it is basically
18 correct as to what your duties and responsibilities
19 were?
20 A. Yes, sir.
21 Q. And, in part, your duties as Deputy Fire
22 Chief would be including supervising the fire
23 suppression personnel that were under your command?
24 A. Yes, sir.
25 Q. Did you periodically assess the job

1 performance and evaluate the job performance of the
 2 firefighters under your level?
 3 A. Officially, no. Unofficially, yes. The
 4 only people I evaluated would be my direct reports.
 5 Q. What do you mean by that, your direct
 6 reports?
 7 A. The assistant chiefs -- or the battalion
 8 chiefs as they're now called.
 9 Q. When David Davis was employed as a sergeant
 10 in the Phenix City Fire Department, was he under
 11 your supervision and management?
 12 A. Indirect, yes, sir.
 13 Q. And indirect meaning that there were some
 14 positions between --
 15 A. In the chain of command, yes, sir.
 16 Q. What is the organizational structure and
 17 chain of command within the city's fire department,
 18 starting with Fire Chief?
 19 A. Fire Chief, Deputy Chief, battalion chiefs,
 20 now captain, sergeant, firefighter.
 21 Q. Is there a position called Assistant Fire
 22 Chief?
 23 A. No longer, unless they changed it after I
 24 left. It was changed to Battalion Chief.
 25 Q. And when you were a Deputy Chief for the

9
 1 and fire department equipment to be an important
 2 issue involving effective operations of the fire
 3 department and involving public safety?
 4 A. Yes, sir.
 5 Q. Would you consider adequate financial
 6 resources that might be available to a fire
 7 department to be an important issue concerning fire
 8 department operations and also public safety?
 9 A. Yes, sir.
 10 Q. Would you consider adequate response times
 11 and adequate dispatching procedures in a fire
 12 department to be an important issue of effective
 13 fire department operations and also public safety?
 14 A. Yes, sir.
 15 Q. Would you consider training, adequate
 16 training of firefighters in the fire department, to
 17 be an important issue that affects effective
 18 operations of the fire department and also public
 19 safety?
 20 A. Yes, sir.
 21 Q. Returning to your position as Deputy Fire
 22 Chief, did you have the authority in that position
 23 to hire and fire employees in the fire department?
 24 A. No, sir.
 25 Q. What's your understanding as to who had

1 Phenix City Fire Department, were you obligated to
 2 become familiar with the general guidelines and
 3 standard operating procedures and rules and
 4 regulations of the fire department?
 5 A. Yes, sir.
 6 Q. Would that include also the city's Merit
 7 System rules and regulations?
 8 A. Yes, sir.
 9 Q. Based upon your extensive experience in the
 10 fire service, including your capacity as Deputy
 11 Chief here in the city fire department, would you
 12 consider the recruitment and retention of
 13 firefighters to be an important issue in any fire
 14 department and also important to public safety?
 15 A. Yes, sir.
 16 Q. Would you consider adequate staffing to be
 17 an important issue to the operation of a fire
 18 department and to public safety?
 19 A. Yes, sir.
 20 Q. Would you consider employee morale within a
 21 fire department to be an important issue concerning
 22 effective operations of the fire department and also
 23 public safety?
 24 A. Yes, sir.
 25 Q. Would you consider adequate protective gear

10
 1 that authority?
 2 A. My understanding, as long as I have been in
 3 the fire service, only the department director has
 4 authority to hire, fire, promote, or demote.
 5 Q. So that would be the fire chief here in the
 6 city of Phenix City?
 7 A. Yes, sir.
 8 Q. Did you have any authority over any
 9 disciplinary action when you were Deputy Chief?
 10 A. Yes, sir.
 11 Q. What was the nature or range of your
 12 authority to discipline?
 13 A. Well, of course, I could administer
 14 discipline according to the Merit System. But if it
 15 was something I did not myself implement or
 16 initiate, then it would come up through the chain of
 17 command to me, and from me to the chief for me to
 18 review.
 19 Q. Okay. Do you know what role, if any, the
 20 city manager would play if a firefighter is going to
 21 be discharged from his position?
 22 A. My understanding, it has to have the city
 23 manager's approval.
 24 Q. Is it your understanding that the city
 25 manager is the ultimate decisionmaking authority --

1 A. Yes, sir.
 2 Q. -- with regard to firing a firefighter?
 3 A. Yes, sir.
 4 Q. At some point in time, sir, did you become
 5 aware that the firefighters employed by the Phenix
 6 City Fire Department had formed a labor
 7 organization?
 8 A. Yes, sir.
 9 Q. And how did that come to your attention?
 10 A. Shortly after I started work, David Davis
 11 was assigned to Station One and said he wanted to
 12 meet with me. He went through the chain of command
 13 and wanted to let me know he was president of the
 14 firefighters association, he hoped we could get
 15 along and have a harmonious working relationship.
 16 The meeting was short. And I assured him that I
 17 would work with anybody I could; as long as
 18 everybody understood their job, we would have no
 19 problems.
 20 Q. Do you remember approximately what period
 21 of time this was when Mr. Davis informed you that he
 22 was the president of the firefighters local labor
 23 association?
 24 A. It was shortly after I started to work. It
 25 was probably around January, I would imagine.

14 1 Q. What year?
 2 A. 2006.
 3 Q. Okay. Did you know that Mr. Davis was also
 4 previously a vice-president of the firefighters
 5 local union?
 6 A. Yes, sir.
 7 Q. Let me invite your attention to an exhibit
 8 in our binder. It's Exhibit 18, and this appears to
 9 be a memorandum from yourself, Mr. Waters, when you
 10 were Deputy Chief of the city fire department,
 11 addressed to Chief Wallace Hunter dated February 6,
 12 2006, and regarding, quote, letter to Mr. H.H.
 13 Roberts, end quote. You see where it says that?
 14 A. Yes, sir.
 15 Q. And did you prepare this memo and give it
 16 to Chief Hunter?
 17 A. Yes, I did.
 18 Q. And is this your own language that you
 19 typed up?
 20 A. Yes, it was.
 21 Q. Nobody prepared this for you?
 22 A. Absolutely not.
 23 Q. And prior to giving this memo to Chief
 24 Hunter, were you instructed to meet with Mr. Davis
 25 concerning a letter that apparently had been sent by

13 1 a Mr. Schaitberger to the city manager?
 2 A. No, sir. I was not instructed. In fact, I
 3 asked Chief Hunter if it would be all right if I did
 4 meet with him, because the letter was not addressed
 5 to me. But I asked the chief if I could have his
 6 approval to meet with David to see if we could find
 7 out what was going on. But I was not instructed to
 8 meet with David.
 9 Q. So this was your idea, to meet with David
 10 about the letter?
 11 A. Yes, sir, it was.
 12 Q. And what caused you to reach that
 13 conclusion and make that request to Chief Hunter?
 14 A. Because I thought I had a relationship with
 15 David, as I did with everybody else in the
 16 department, where I could sit down and talk and find
 17 out what was going on; if there was something I
 18 needed to be aware of or if there's other
 19 circumstances.
 20 Q. When you had this conversation and made the
 21 request to Chief Hunter, had you seen the letter
 22 that was sent by Mr. Schaitberger of the IAFF to
 23 City Manager Roberts?
 24 A. I believe I had. What exhibit is that?
 25 Q. That would be Exhibit 17. Why don't you go

14 1 ahead and take a look at that. And, for the record,
 2 this is the letter from the general president of the
 3 International Association of Firefighters.
 4 A. Right. Yes, sir, I did.
 5 Q. And it's dated January 31, 2006, addressed
 6 to the city manager. So your testimony is that you,
 7 in fact, saw a copy of this?
 8 A. Yes, sir, I did.
 9 Q. And when you read a copy of this letter, is
 10 that what prompted you to go to Chief Hunter and
 11 request a chance to discuss this subject with
 12 Mr. Davis?
 13 A. No, sir. It was a letter, I believe, that
 14 Mr. Malone, if I'm not mistaken, had sent through
 15 the city manager -- or Mr. Malone had called or
 16 something. And I, at that time, told the chief, I
 17 said, I don't believe that, you know, David is aware
 18 of any of this going on, so I would like to have
 19 your permission to talk to him. It was really about
 20 a conversation, I believe, with a Mr. Malone that
 21 prompted me to ask the Chief if I could talk to
 22 David.
 23 Q. We may be talking about two different
 24 things here. Let me go back to Exhibit 18, again
 25 your memo to Chief Hunter of February 6, 2006. And

1 you see in the second sentence it says, quote, the
 2 purpose of the meeting was to discuss the letter
 3 Mr. Roberts received from Mr. Schaitberger.

4 A. Yes.

5 Q. So just focusing on that, and so your
 6 testimony is clear, is this -- the meeting that you
 7 had with Mr. Davis for the purpose of discussing the
 8 Schaitberger letter?

9 A. Yes, sir.

10 Q. Okay. And was this your own idea, that you
 11 had suggested this to Chief Hunter that you meet
 12 with David?

13 A. Yes, sir.

14 Q. You'll see at the end of your memo to Chief
 15 Hunter at the bottom it says, quote, as I have
 16 communicated to you on several -- I believe that
 17 should be occasions. It says obsessions, but did
 18 you mean occasions?

19 A. Typographical error.

20 Q. Then it continues, David Davis is doing an
 21 outstanding job for me and has a very positive and
 22 professional attitude, end quote. Do you see where
 23 it says that?

24 A. Yes, sir.

25 Q. Did you honestly and truthfully believe

17

1 A. Yes, sir. I did.

2 Q. Can you recall any specific examples where
 3 he did an absolute outstanding job on a fire run or
 4 rescue service call or --

5 A. No, sir, not on a fire. Primarily, the
 6 things I was making mention to had to do with
 7 assignments that I would give out to people in the
 8 department. And it was probably new to a lot of the
 9 people, the way I was doing things. And they were
 10 required to take topics and research them and then
 11 make Power Point presentations. And everything I
 12 assigned was done, and it was done on time, and a
 13 lot of work went into it. And, you know, as far as
 14 job performance and whatever else, I mean, I -- I
 15 was getting along with everybody, and I thought the
 16 Chief needed to hear that because I was a newcomer,
 17 so to speak, to the department.

18 Q. Did you have any specific concerns or
 19 anything that troubled you concerning David Davis's
 20 job performance?

21 A. Not until the end.

22 Q. And what was the end? What do you mean?

23 A. Well, when the swap time was -- when the
 24 Chief had sat down and thought about implementing
 25 the swap time again -- or trade time or whatever you

19

1 that when you communicated that to Chief Hunter?
 2 A. Yes, sir.

3 Q. And when you say he was doing an
 4 outstanding job, I assume that was in his role as
 5 firefighter for the fire department?

6 A. Sergeant, yes, sir.

7 Q. Sergeant?

8 A. Yes, sir.

9 Q. And could you elaborate or detail that, as
 10 to why you were indicating that David Davis was
 11 doing an outstanding job as a sergeant?

12 A. Could you repeat the question again?

13 Q. Yes. Could you explain in detail that
 14 which caused you to indicate here in this memo to
 15 Chief Hunter that David Davis was doing an
 16 outstanding job?

17 A. I was just reaffirming the fact that I had
 18 had a conversation with Chief Hunter about numerous
 19 people in the department that were doing an
 20 outstanding job, and David -- I never had a problem
 21 with his job performance, and I put that in the
 22 memo.

23 Q. And, evidently, you had communicated that
 24 assessment of his job performance on several
 25 occasions to the Chief?

18

1 want to call it -- I had had the opportunity to meet
 2 with all the people in the department, because he
 3 would come out and had met with everybody in the
 4 shift meetings.

5 And I asked everybody, I said, look, this is a
 6 major deal for the department. And I said, I'll
 7 tell you as I have told you as soon as I walked in
 8 the door; when the Chief of the Department, when the
 9 city manager, mayor, council walks into the fire
 10 station, you stand up, you greet them, you know, you
 11 act interested, you stay focused, and be as
 12 professional and polite as you possibly can. Of
 13 course, this was a major deal for the Department to
 14 get the time reinstated.

15 And at that particular meeting, David's
 16 attitude was very negative. He wouldn't even look
 17 at the chief. He stared off. And I met with his
 18 supervisor after the meeting. They said they
 19 noticed it, too. And said his comment was that
 20 something along the lines that the Chief was doing
 21 his job, so he didn't have to show anything other
 22 than what he was.

23 Q. When, approximately, did this meeting
 24 occur?

25 A. Sir, I'll be honest with you. I don't

20

1 know. Whenever the swap time was reinstated. I'm
 2 sure the Chief would probably know. March, first
 3 part of April, something around there.

4 Q. 2006?

5 A. Yes, sir.

6 CHIEF HUNTER: I think it was --

7 MR. MCKOON: Let him answer to his
 8 recollection.

9 Q. So this concern about this meeting and swap
 10 time would have been after your memo of February 6,
 11 2006?

12 A. Yes, sir.

13 Q. Now, you indicate at the bottom of this
 14 memo that David Davis had a very positive and
 15 professional attitude. Can you think of any
 16 specific examples that would support that assessment
 17 of Davis?

18 A. Specific examples, no, sir, other than the
 19 fact that the contact that I had with David was --
 20 he was always professional. He was very
 21 respectful. I never had any problems. Did what I
 22 asked. And that's exactly what was communicated in
 23 the memo.

24 Q. Take a look at Exhibit 14. This is a
 25 newspaper article that came out, I believe, in

21

1 Phenix City Fire Department?

2 A. No, sir.

3 Q. Have you ever had discussions with any
 4 council members about issues affecting the Phenix
 5 City Fire Department?

6 A. No, sir.

7 Q. Have you ever had any discussions or
 8 conversations with the mayor of Phenix City
 9 concerning its fire department?

10 A. No, sir.

11 Q. At some point in time, Mr. Waters, did it
 12 come to your attention, in perhaps the first few
 13 months of the year, 2006, when you were the Deputy
 14 Chief, that there was consideration being given to
 15 extending the probationary period for new hires in
 16 the fire department from one year to 18 months?

17 A. Yes, sir.

18 Q. Did you play a role in those discussions or
 19 the determination that that might be a good policy
 20 change?

21 A. Did I play a role -- the Chief and I talked
 22 about it. And we had meetings about it in the fire
 23 department and talked about it, just letting
 24 everybody know the purpose of it, which is a good
 25 thing. In fact, it's like an insurance policy for a

23

1 September 2005 from the Columbus Ledger-Enquirer.
 2 And it deals with various issues and personnel that
 3 were employed at the time in the Phenix City Fire
 4 Department. Have you read this newspaper article
 5 before today?

6 A. Yes, sir.

7 Q. And did you read it on or about the time
 8 that it came out in this newspaper?

9 A. Yes, sir.

10 Q. After you read this article, were there any
 11 meetings or discussions within the Fire Department
 12 about the substance of the article?

13 A. I was not employed with the Fire Department
 14 then.

15 Q. Okay. So you were still at the Columbus
 16 Fire Department?

17 A. Yes, sir.

18 Q. Okay. Did you ever get a call from Chief
 19 Hunter?

20 A. About this article right here, no, sir.

21 Q. Did you call him up and say, can I help you
 22 out?

23 A. No.

24 Q. Okay. Have you ever had occasion to
 25 address the city council about issues affecting the

22

1 firefighter. Because the amount of training that
 2 they have to go through and the fact that, you know,
 3 by the time they finish their training, get through
 4 and get assigned to the station, because it's such a
 5 different culture in the work environment, that if
 6 they're not quite adapting, you know, and their
 7 probationary period is 12 months, they could lose
 8 their job. By extending it to 18 months, it's a
 9 benefit for the city and for the employee. That was
 10 clearly communicated, as was the fact that it only
 11 applied to new hires.

12 Q. That was your understanding, that the
 13 proposed policy change only applied to new hires in
 14 the fire department?

15 A. Yes, sir.

16 Q. It did not affect in any way veteran or
 17 experienced firefighters in the department?

18 A. No, sir.

19 Q. And did not affect in any way David Davis,
 20 who had worked for the fire department for a number
 21 of years, correct?

22 A. That is correct, yes, sir.

23 Q. Did it come to your attention that some of
 24 the firefighters or the firefighters labor
 25 association opposed the proposed policy change

24

1 extending it to the 18-month period?
 2 A. No, sir. In fact, there were only two
 3 people in the -- which I don't mean that that shows
 4 a hundred percent consensus. But only two people
 5 even questioned the Chief about the proposal going
 6 from 12 to 18 months. And when he explained that it
 7 has nothing to do with you, it's only for new hires
 8 after the ordinance takes effect, there was no more
 9 discussion. No one talked to me about it that I can
 10 recall.

11 Q. Who were the two individuals that raised
 12 those concerns; do you remember?

13 A. Sir, I honestly cannot recall.

14 Q. Do you know whether or not in a
 15 probationary period that a firefighter -- for
 16 example, as a new hire -- can be subject to
 17 termination for any reason or no reason at all while
 18 he's a probationary period employee?

19 A. Yes, sir.

20 Q. That's a true statement?

21 A. Yes, sir. I believe that is.

22 Q. Do you have a view on whether or not
 23 changing the probationary period to 18 months had
 24 any impact on trying to recruit qualified personnel
 25 into the fire department?

1 A. No, sir, it did not, because there was
 2 applications coming in on a regular basis to the
 3 Department.

4 Q. All right. Moving into a different area.
 5 Did it come to your attention at one point in time
 6 that apparently David Davis placed a telephone call
 7 to Mayor Hardin in April of 2006?

8 A. Yes, sir.

9 Q. How did that come to your attention?

10 A. The chief had mentioned it to me, that he
 11 had overheard the conversation in this building.

12 Q. When you say the Chief, you mean Chief
 13 Hunter?

14 A. Chief Hunter.

15 Q. Chief Hunter?

16 A. Yes, sir.

17 Q. Did it come to your attention any
 18 information or facts as to what the nature of that
 19 telephone call was between Mr. Davis and the mayor?

20 A. If I recall, it had to do with the
 21 probationary -- the proposed probationary ordinance,
 22 if I recall correctly.

23 Q. Were you asked by anyone to investigate the
 24 matter of Mr. Davis having a telephone conversation
 25 with Mayor Hardin in April of 2006?

25

1 A. Yes, sir.
 2 Q. And who asked you to do something?
 3 A. Chief Hunter.
 4 Q. And what did he ask you to do?
 5 A. He asked me to meet with David to ask him
 6 what happened, or, in fact, if it did happen.

7 Q. And did you comply with that directive?

8 A. Yes, sir.

9 Q. And did you, in fact, meet with David
 10 Davis?

11 A. Yes, sir, along with his immediate
 12 supervisor, Captain Bennett, and the Assistant Chief
 13 at that time, Bobby Brooks.

14 Q. Okay. Would this have been shortly after
 15 the telephone conversation that was held between
 16 Davis and the mayor?

17 A. I would assume so, yes, sir.

18 Q. Did you ask Mr. Davis at that time to give
 19 a written statement?

20 A. Yes, sir, I did. I asked him what happened
 21 and he told me. I said, okay, David, what I want
 22 you to do is to go next door to the office and get
 23 on the computer and type a letter to Chief Hunter
 24 explaining what happened. And I want to hand carry
 25 it to him. And that was the extent of the

26

1 conversation.

2 Q. Take a look at Exhibit 22, which appears to
 3 be that statement that you just mentioned.

4 A. Yes, sir.

5 Q. You can read it to yourself. It's very
 6 short.

7 A. Yes, sir.

8 Q. Is that, in fact, the statement that you
 9 asked Mr. Davis to produce and give back to you?

10 A. Yes, sir.

11 Q. Now, as far as you know, based upon your
 12 investigation and conversations on the subject
 13 matter, is that a truthful and accurate statement
 14 that Mr. Davis put together and handed to you?

15 A. As far as I know, it is. I mean, I have no
 16 idea whether he talked to him that night or not.

17 All I know is that he said he did call him and he
 18 was acting in his capacity as president of the
 19 union.

20 Q. And when you received this statement from
 21 Mr. Davis, did you, in fact, hand carry it and give
 22 it to Chief Hunter?

23 A. Yes, sir. I believe I was the one that
 24 hand carried it, if I'm not mistaken.

25 Q. At that time, did you have a conversation

27

1 with Chief Hunter related to this subject?
 2 A. No, sir. I don't recall us having a
 3 conversation about it. I may be incorrect, but I
 4 don't recall a conversation with him concerning this
 5 right here.
 6 Q. So he didn't say anything to you even like
 7 thanks for the statement or do you have a view on
 8 this investigation or --
 9 A. Well, I mean, first of all, there was no
 10 investigation by me. All I did was ask David a
 11 question. That's all I did.
 12 Q. And what was that question?
 13 A. Did he, in fact, call the mayor and did he
 14 go through the chain of command? That's it.
 15 Q. And did he give you an answer?
 16 A. He said he did call the mayor and he did
 17 not go through the chain of command.
 18 Q. Okay. Did he say he called the mayor when
 19 he was off duty?
 20 A. Sir, I don't recall if that was part of the
 21 conversation or not.
 22 Q. All right. Were you asked by Chief Hunter
 23 or Personnel Director Barbara Goodwin or even City
 24 Manager Roberts for any recommendation or input as
 25 to whether or not Mr. Davis should be disciplined

1 for placing a telephone call to the mayor?
 2 A. No, sir.
 3 Q. Did you, in fact, make any recommendations
 4 or have any input concerning possible discipline of
 5 Davis over this subject?
 6 A. Well, I had the disciplinary report
 7 completed. That's why my name is on there as being
 8 the supervisor. And the Merit System is clear that
 9 on your second Group II offense you're terminated.
 10 And so, I mean -- you know, there was, as I recall,
 11 nothing in the disciplinary report form for that
 12 other than the fact that it quoted the Merit System
 13 what happens on your second Group II or your first
 14 Group III offense.
 15 Q. What, specifically, was the second Group II
 16 offense that David Davis engaged in?
 17 A. It involved the chain of command.
 18 Q. The telephone call to the mayor?
 19 A. Yes, sir.
 20 Q. Did you ever say to Chief Hunter that you
 21 didn't think Mr. Davis should be terminated?
 22 A. No sir. Not that I recall.
 23 Q. And are you familiar with the Group III
 24 offenses?
 25 A. Yes, sir.

29 1 Q. Why don't we take a look at Exhibit 24,
 2 which is a document that I believe bears your
 3 signature on the second page.
 4 A. Yes, sir.
 5 Q. And this is described as a written warning
 6 form dated April 20, 2006. And, again, at the
 7 second page, is that your signature?
 8 A. Yes, it is.
 9 Q. As the supervisor of Mr. Davis?
 10 A. Yes, sir.
 11 Q. And is that your handwriting on the date of
 12 4/21/06?
 13 A. Yes, sir.
 14 Q. The bottom of the first page, it refers to
 15 the second Group II offense that we just discussed.
 16 And then it goes on to say, quote, discharged as per
 17 Merit System's rules and regulations for first Group
 18 III offense, end quote. You see where it says that?
 19 A. Yes, sir.
 20 Q. So just so the record is clear, the
 21 discharge concerning the first Group III offense
 22 would have been focused on the telephone call and
 23 conversation that Davis had with the mayor; is that
 24 correct?
 25 A. My interpretation would be the

30 1 insubordination where the city manager had written a
 2 letter stating that the city does not recognize the
 3 union and that any business as such -- something
 4 along those lines -- has to go through the city
 5 manager. And that was the point of the conversation
 6 that we had in the office with David and Captain
 7 Bennett and Chief Brooks; to ask did you, in fact,
 8 go through the chain of command with supervisors and
 9 whatever. And it was not.
 10 So my understanding is that the city manager,
 11 when he wrote that memo stating that the city does
 12 not recognize a union and that any dealings were to
 13 go through him, something along those lines,
 14 specifically. So that, in effect, was my
 15 interpretation of insubordination, because you had a
 16 directive stating you could not do it.
 17 Q. Okay. Let me state it the opposite way.
 18 If Mr. Davis had not placed the telephone call to
 19 the mayor in April of 2006, had not had that
 20 telephone conversation, he would not have been
 21 charged with a second Group II offense; is that
 22 correct?
 23 A. That's correct. He would not have done
 24 anything wrong.
 25 Q. Right. Same question: If he had not

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1 placed the telephone call and had the telephone
 2 conversation with the mayor in April of 2006, he
 3 would not have been charged with a first Group III
 4 offense; is that correct?
 5 A. That's my understanding, yes, sir.
 6 Q. And if he had not placed that telephone
 7 call, he would not have been discharged; is that
 8 correct?
 9 A. Well, yes, sir.
 10 Q. Did you participate in a meeting about this
 11 same period of time on April 19 or April 20, 2006,
 12 concerning this subject, which included Mr. Davis?
 13 A. A meeting?
 14 Q. A meeting, yes.
 15 A. With who?
 16 Q. With Mr. Davis perhaps? Or perhaps with
 17 Chief Hunter? Perhaps with Personnel Director
 18 Goodwin?
 19 A. Yes, sir.
 20 Q. You did?
 21 A. Yes, sir.
 22 Q. And you remember that meeting?
 23 A. Yes, sir.
 24 Q. Where did that meeting occur?
 25 A. In the Personal Director's office.

33 1 Personnel Director asked him if he wanted to resign.
 2 Q. That was Ms. Goodwin asked him if he wanted
 3 to resign?
 4 A. Yes, sir.
 5 Q. And what was his response to that?
 6 A. No.
 7 Q. Did he say why he did not want to resign?
 8 A. I don't recall if he did.
 9 Q. Did he say he would like to think it over
 10 or he would like to speak with a lawyer or he would
 11 like to check out what his options are? Say
 12 anything like that?
 13 A. I don't recall hearing any of that, sir.
 14 I'm not saying he didn't. I just don't recall
 15 hearing that.
 16 Q. So what happened next at the meeting then
 17 when he indicated he did not prefer to resign?
 18 A. Then he was told that his employment would
 19 be terminated.
 20 Q. And was he handed a copy of this
 21 disciplinary written warning form at the time?
 22 A. I know that he had asked -- if I'm not
 23 mistaken, he asked for copies of his personnel file.
 24 Q. But this Exhibit 24, the written warning
 25 form which indicates he was being discharged, was he

1 Q. And how did that meeting come about? How
 2 did you learn that you were supposed to go to a
 3 meeting?
 4 A. Because the Chief had called and told me to
 5 have David report to Personnel on a specific date
 6 and time.
 7 Q. Okay. And who do you recall was at the
 8 meeting?
 9 A. It was just myself, Chief Hunter, the
 10 Personnel Director, and David came in.
 11 Q. Do you know if there was a police officer
 12 in the area as well?
 13 A. I believe there was, yes, sir.
 14 Q. And do you know the name of that police
 15 officer?
 16 A. No, sir.
 17 Q. Was the police officer asked to be there
 18 because of the meeting?
 19 A. Sir, I really don't know, to be a hundred
 20 percent correct, if he or she was, because I
 21 couldn't tell if you it was a male or female police
 22 officer, to be honest with you.
 23 Q. Okay. And what occurred at the meeting?
 24 A. David was brought in and read the charges
 25 and asked if he had any questions. And then the

34 1 handed a copy of that at the meeting?
 2 A. Sir, I don't know.
 3 Q. What about Exhibit 25 which is entitled End
 4 of Employment form?
 5 A. Yes, sir.
 6 Q. Was that a document that was at the meeting
 7 that you're talking about?
 8 A. If it was, I did not see it.
 9 Q. So you don't know whether or not anyone
 10 handed Mr. Davis this form during that meeting?
 11 A. No, sir. I do not know that.
 12 Q. So at that meeting, then, did you consider
 13 that, in fact, Mr. Davis's employment with the city
 14 and the fire department was terminated?
 15 A. After the meeting?
 16 Q. At the meeting. I mean, was that the
 17 operative time and date that he was fired?
 18 A. I would have to say yes, sir.
 19 Q. Do you know if Mr. Davis was then given any
 20 instructions as to what he should do after the
 21 meeting?
 22 A. Well, I know what I did. I don't know if
 23 this has anything to do with your question or not,
 24 but I actually had gotten up and called the station
 25 he was assigned to and had them leave so he could go

1 by and clear out his locker, because I didn't want
 2 to make it any more uncomfortable for him than it
 3 was going to be. And when I was told that was done,
 4 then I even brought David and told him that; I said,
 5 go ahead and go by the station and get his stuff so
 6 he could turn it in. That's the only conversation I
 7 had with David.

8 Q. Okay. So at the end of the meeting, David
 9 was instructed to go to Fire Station 3 and clear out
 10 his locker?

11 A. Yes, sir, and turn his equipment in.

12 Q. Who gave him that instruction? Was that
 13 you or Chief Hunter?

14 A. I did.

15 Q. You did?

16 A. Yes, sir.

17 Q. And do you know, sir, that then Mr. Davis
 18 exercised his right to appeal his termination to the
 19 Personnel Review Board?

20 A. Yes, sir.

21 Q. Did you go to that hearing?

22 A. Yes, sir.

23 Q. Did you give testimony?

24 A. Yes, sir.

25 Q. And who were you called by to give

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1 that he sought employment elsewhere?

2 A. I had heard that, yes, sir.

3 Q. Were you ever contacted by a prospective
 4 employer or fire chief in any department --

5 A. No, sir.

6 Q. -- concerning Mr. Davis?

7 A. No, sir.

8 Q. Did you ever receive any contact from any
 9 newspaper reporters about Mr. Davis or his
 10 terminated employment?

11 A. Well, Chuck Williams had called over to the
 12 department one day and had asked about the pending
 13 lawsuit. And I told him I could not discuss it; he
 14 would have to talk to Chief Hunter. And I mean, we
 15 didn't discuss the case or anything else. I told
 16 him he would have to talk to Chief Hunter about it.

17 Q. During the time that you were Deputy Chief
 18 here in the Phenix City Fire Department, did you
 19 ever communicate with any members of the media or
 20 any newspaper reporters about issues affecting the
 21 department?

22 A. Only interview I had was concerning a grant
 23 that the city had gotten and the equipment that they
 24 had purchased with the grant money, if I'm not
 25 mistaken.

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1 testimony? Was it the city attorney or someone
 2 else?

3 A. I guess it would have been the city
 4 attorney.

5 Q. And what was the substance of your
 6 testimony before the Personnel Board?

7 A. I guess basically what happened, how the
 8 situation came about, and the conversation I had
 9 with David in the office on that day that I asked
 10 him about had he called the mayor and if he went
 11 through the chain of the command. My testimony in
 12 that meeting was pretty short, if I'm not mistaken.

13 Q. Did you favor or support the termination of
 14 David Davis?

15 A. Support it.

16 Q. You did support it?

17 A. Yes, sir.

18 Q. Why is that, sir?

19 A. Because there's no options. The way the
 20 personnel regulations are written, it wasn't just
 21 one thing that any person is going to be fired for.
 22 It's going to be his or her personnel file, any
 23 discipline that's already in there.

24 Q. Did it come to your attention that after
 25 Mr. Davis was terminated by the city of Phenix City,

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1 Q. That was during your time as Deputy Chief
 2 here?

3 A. Yes, sir. I may be wrong, but that's the
 4 only one I can recall.

5 Q. And were you quoted in a newspaper about
 6 that subject?

7 A. Well, it wasn't the newspaper, sir. It
 8 was a television station.

9 Q. And were you on camera during that
 10 interview?

11 A. Yes, sir.

12 Q. Do you know if they ran it on the TV
 13 station?

14 A. Yes, sir. I believe they did.

15 Q. Your interview?

16 A. Yes, sir.

17 Q. And did you get prior approval from Chief
 18 Hunter or anyone else to do that?

19 A. He's the one that told me to do it.

20 Q. He instructed you to do that?

21 A. Yes, he did.

22 Q. Now, when you were the fire chief across
 23 the river here in Columbus, did you have occasion at
 24 any time to speak to the newspaper media or the
 25 television or radio media?

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1 A. Yes, sir.
2 Q. Would that have been about issues affecting
3 the fire department in Columbus?
4 A. Yes, sir, primarily.
5 Q. Did you feel like you had a First Amendment
6 right of free speech to do that?
7 A. Yes, sir.
8 Q. Did you get anyone's approval over in
9 Columbus to speak to the media?
10 A. I didn't have to.
11 Q. Why do you say you didn't have to? There
12 was no rule or regulation on the subject?
13 A. No, sir. I was a department director.
14 Q. Director?
15 A. Yes, sir. Department directors have the
16 authority to do that. And unless it has something
17 to do with city business outside of the fire
18 department, then you couldn't speak to that. You
19 would have to --
20 MR. WOODLEY: Okay, Mr. Waters. I don't
21 have any further questions. Thanks for coming
22 today.
23 (The deposition concluded at 2:27 p.m.)
24 *****
25

1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA
3 MONTGOMERY COUNTY
4 I, Shannon Williams, Certified Shorthand
5 Reporter and Commissioner for the State of Alabama
6 at Large, hereby certify that on April 4, 2007, I
7 reported the deposition of ROLAND LEROY WATERS, who
8 was first duly sworn or affirmed to speak the truth
9 in the matter of the foregoing cause, and that pages
10 1 through 42 contain a true and accurate
11 transcription of the examination of said witness by
12 counsel for the parties set out herein.
13 I further certify that I am neither of kin nor
14 of counsel to any of the parties to said cause, nor
15 in any manner interested in the results thereof.
16 This 8th day of April, 2007.

17
18
19 SHANNON M. WILLIAMS, CSR
20 Commissioner for the
State of Alabama at Large
21 MY COMMISSION EXPIRES: 1/14/2010
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23
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department (6:12) (6:24) (7:4)
 (7:10) (7:14) (7:15) (7:17) (7:23)
 (8:1) (9:10) (9:17) (10:1) (10:4)
 (10:11) (10:14) (10:18) (10:21)
 (10:22) (11:1) (11:3) (11:7) (11:8)
 (11:12) (11:13) (11:16) (11:18)
 (11:23) (12:3) (13:6) (14:10) (15:16)
 (18:5) (18:19) (19:8) (19:17) (20:2)
 (20:6) (20:8) (20:13) (22:4) (22:11)
 (22:13) (22:16) (23:1) (23:5) (23:9)
 (23:16) (23:23) (24:14) (24:17)
 (24:20) (25:25) (26:3) (36:14) (39:4)
 (39:12) (39:18) (39:21) (41:3) (41:13)
 (41:15) (41:18)
deposition (1:15) (3:4) (3:6) (3:13)
 (3:18) (4:17) (4:21) (5:11) (8:5)
 (41:23) (42:7)
deputy (7:3) (7:22) (8:14) (8:21)
 (9:19) (9:25) (10:10) (11:21) (12:9)
 (14:10) (23:13) (39:17) (40:1)
described (31:5)
description (8:13) (8:15)

detail (18:9) (18:13)
determination (23:19)
didn't (6:22) (20:21) (29:6) (30:21)
 (35:14) (37:1) (39:15) (41:10) (41:11)
different (16:23) (24:5) (26:4)
direct (9:4) (9:5)
directive (27:7) (32:16)
director (12:3) (29:23) (33:17)
 (34:10) (35:1) (41:13) (41:14)
directors (41:15)
director's (33:25)
discharge (31:21)
discharged (12:21) (31:16) (33:7)
 (35:25)
disciplinary (12:9) (30:6) (30:11)
 (35:21)
discipline (12:12) (12:14) (30:4)
 (38:23)
disciplined (29:25)
discuss (5:17) (16:11) (17:2)
 (39:13) (39:15)
discussed (31:15)
discussing (17:7)
discussion (25:9)
discussions (22:11) (23:3) (23:7)
 (23:18)
dispatching (11:11)
district (1:1) (1:2)
division (1:3) (7:25)
document (31:2) (36:6)
documents (8:8)
does (32:2) (32:11)
doing (7:19) (17:20) (18:3) (18:11)
 (18:15) (18:19) (19:9) (20:20)
done (19:12) (32:23) (37:3)
door (20:8) (27:22)
down (15:16) (19:24)
duly (4:2) (42:8)
during (36:10) (39:17) (40:1) (40:9)
duties (7:24) (8:18) (8:21)
duty (29:19)

E

earlier (6:23)
eastern (1:3)
effect (25:8) (32:14)
effective (10:22) (11:2) (11:12)
 (11:17)
eight (6:13)
either (3:19)
elaborate (18:9)
else (15:15) (19:14) (38:2) (39:15)
 (40:18)
elsewhere (39:1)
emergency (6:10) (7:5)
employed (6:5) (9:9) (13:5) (22:3)
 (22:13)
employee (10:20) (24:9) (25:18)
employees (11:23)
employer (39:4)
employment (7:20) (35:18) (36:4)
 (36:13) (39:1) (39:10)
ems (5:1)
end (14:13) (17:14) (17:22) (19:21)
 (19:22) (31:18) (36:3) (37:8)
engaged (30:16)
entitled (36:3)
environment (24:5)
equipment (11:1) (37:11) (39:23)
error (17:19)
est (1:21)
evaluate (9:1)
evaluated (9:4)
even (20:16) (25:5) (29:6) (29:23)
 (37:4)
ever (4:21) (22:18) (22:24) (23:3)
 (23:7) (30:20) (39:3) (39:8) (39:19)

formality

everybody (13:18) (15:15) (19:15)
 (20:3) (20:5) (23:24)
everything (19:11)
evidence (3:13)
evidently (18:23)
exact (6:21)
exactly (21:22)
examination (4:7) (42:11)
example (25:16)
examples (19:2) (21:16) (21:18)
exercised (37:18)
exhibit (8:12) (14:7) (14:8) (15:24)
 (15:25) (16:24) (21:24) (28:2) (31:1)
 (35:24) (36:3)
exhibits (8:3) (8:7)
expedite (8:5)
experience (10:9)
experienced (24:17)
expires (42:21)
explain (5:9) (18:13)
explained (25:6)
explaining (27:24)
extending (23:15) (24:8) (25:1)
extensive (10:9)
extent (27:25)

F

fact (15:2) (16:7) (18:17) (21:19)
 (23:25) (24:2) (24:10) (25:2) (27:6)
 (27:9) (28:8) (28:21) (29:13) (30:3)
 (30:12) (32:7) (36:13)
facts (26:18)
familiar (8:14) (10:2) (30:23)
far (8:17) (19:13) (28:11) (28:15)
favor (38:13)
february (7:18) (14:11) (16:25)
 (21:10)
federal (3:5) (3:14) (3:20) (4:14)
feel (8:10) (41:5)
female (34:21)
few (5:7) (23:12)
file (35:23) (38:22)
financial (11:5)
find (15:6) (15:16)
finish (24:3)
fire (6:10) (6:12) (6:24) (7:4) (7:5)
 (7:9) (7:14) (7:17) (7:23) (8:14)
 (8:21) (8:22) (9:10) (9:17) (9:18)
 (9:19) (9:21) (10:1) (10:4) (10:10)
 (10:11) (10:13) (10:17) (10:21)
 (10:22) (11:1) (11:2) (11:6) (11:7)
 (11:11) (11:13) (11:16) (11:18)
 (11:21) (11:23) (12:3) (12:4) (12:5)
 (13:6) (14:10) (18:5) (19:3) (19:5)
 (20:9) (22:3) (22:11) (22:13) (22:16)
 (23:1) (23:5) (23:9) (23:16) (23:22)
 (24:14) (24:20) (25:25) (36:14) (37:9)
 (39:4) (39:18) (40:22) (41:3) (41:17)
fired (36:17) (38:21)
firefighter (9:20) (12:20) (13:2)
 (18:5) (24:1) (25:15)
firefighters (9:2) (10:13) (11:16)
 (13:5) (13:14) (13:22) (14:4) (16:3)
 (24:17) (24:24)
firing (13:2)
first (4:2) (8:11) (21:2) (23:12)
 (29:9) (30:13) (31:14) (31:17) (31:21)
 (33:3) (41:5) (42:8)
flsa (5:2)
focused (20:11) (31:22)
focusing (17:5)
following (5:10)
follows (4:4)
foregoing (42:9)
form (3:10) (5:21) (30:11) (31:6)
 (35:21) (35:25) (36:4) (36:10)
formality (3:9)

formed

mistaken

formed (13:6)
free (8:10) (41:6)
front (8:2)
full (4:9) (8:6)
further (3:16) (41:21) (42:13)

G

gave (37:12)
gear (10:25)
general (10:2) (16:2)
georgia (7:5)
getting (19:15)
give (5:15) (14:15) (19:7) (27:18) (28:9) (28:21) (29:15) (37:23) (37:25)
given (23:14) (36:19)
giving (14:23)
goes (31:16)
going (5:12) (12:20) (15:7) (15:17) (16:18) (25:5) (37:3) (38:21) (38:22)
good (23:19) (23:24)
goodwin (29:23) (33:18) (35:2)
got (8:4)
gotten (36:24) (39:23)
graham (2:7) (4:6)
grant (39:22) (39:24)
greet (20:10)
group (30:9) (30:13) (30:14) (30:15) (30:23) (31:15) (31:17) (31:21) (32:21) (33:3)
guess (38:3) (38:7)
guidelines (10:2)

H

hall (1:19)
hand (27:24) (28:21) (28:24)
handed (28:14) (35:20) (36:1) (36:10)
handwriting (31:11)
happen (27:6)
happened (27:6) (27:20) (27:24) (35:16) (38:7)
happens (30:13)
happy (4:18)
hardin (26:7) (26:25)
harmonious (13:15)
has (12:3) (12:22) (17:21) (25:7) (32:4) (36:23) (41:16)
having (4:2) (26:24) (29:2)
hear (4:16) (19:16)
heard (39:2)
hearing (35:13) (35:15) (37:21)
held (7:13) (8:13) (27:15)
help (22:21)
her (38:22)
hereby (3:2) (42:6)
herein (42:12)
hereto (3:20)
he's (25:18) (40:19)
highest (7:13)
him (13:16) (15:4) (16:19) (21:7) (22:21) (27:5) (27:20) (27:25) (28:16) (28:17) (29:4) (32:13) (35:1) (35:2) (37:2) (37:4) (37:12) (38:10) (39:13) (39:16)
hire (11:23) (12:4) (25:16)
hires (23:15) (24:11) (24:13) (25:7)
his (12:21) (15:5) (18:4) (18:21) (18:24) (20:17) (20:19) (20:21) (21:7) (27:11) (28:18) (35:5) (35:11) (35:18) (35:23) (37:1) (37:5) (37:10) (37:11) (37:18) (38:22) (39:9)
honest (20:25) (34:22)
honestly (17:25) (25:13)
hoped (13:14)
hundred (25:4) (34:19)
hunter (2:16) (14:11) (14:16) (14:24) (15:3) (15:13) (15:21) (16:10) (16:25) (17:11) (17:15) (18:1) (18:15)

(18:18) (21:6) (22:19) (26:13) (26:14) (26:15) (27:3) (27:23) (28:22) (29:1) (29:22) (30:20) (33:17) (34:9) (37:13) (39:14) (39:16) (40:18)

I

iaff (15:22)
idea (15:9) (17:10) (28:16)
iii (30:14) (30:23) (31:18) (31:21) (33:3)
i'll (4:18) (20:6) (20:25)
imagine (13:25)
immediate (27:11)
impact (25:24)
implement (12:15)
implementing (19:24)
important (10:13) (10:14) (10:17) (10:21) (11:1) (11:7) (11:12) (11:17)
importantly (5:25)
include (10:6)
included (33:12)
including (8:22) (10:10)
incorrect (29:3)
indicate (18:14) (21:13)
indicated (35:17)
indicates (35:25)
indicating (18:10)
indirect (9:12) (9:13)
individuals (25:11)
information (26:18)
informed (13:21)
initiate (12:16)
input (29:24) (30:4)
instructed (14:24) (15:2) (15:7) (37:9) (40:20)
instruction (37:12)
instructions (36:20)
insubordination (32:1) (32:15)
insurance (23:25)
interested (20:11) (42:15)
international (16:3)
interpretation (31:25) (32:15)
interview (39:22) (40:10) (40:15)
into (19:13) (20:9) (25:25) (26:4)
introduced (3:18)
investigate (26:23)
investigation (28:12) (29:8) (29:10)
invite (8:7) (8:11) (14:7)
involved (30:17)
involving (5:1) (11:2) (11:3)
issue (5:3) (10:13) (10:17) (10:21) (11:2) (11:7) (11:12) (11:17)
issues (22:2) (22:25) (23:4) (39:20) (41:2)

J

james (2:7) (2:10)
january (13:25) (16:5)
job (6:9) (6:17) (6:18) (8:12) (8:13) (8:15) (8:25) (9:1) (13:18) (17:21) (18:4) (18:11) (18:16) (18:20) (18:21) (18:24) (19:3) (19:14) (19:20) (20:21) (24:8)

K

kin (42:13)

L

labor (13:6) (13:22) (24:24)
language (14:18)
large (1:18) (3:8) (42:6) (42:20)
lastly (5:19)
lawsuit (5:1) (5:6) (39:13)
lawyer (35:10)
learn (34:2)
least (5:5)
leave (36:25)

ledger-enquirer (22:1)

left (9:24)
leroy (1:15) (3:4) (4:1) (4:11) (42:7)
let (8:11) (13:13) (14:7) (16:24) (21:7) (32:17)
letter (14:12) (14:25) (15:4) (15:10) (15:21) (16:2) (16:9) (16:13) (17:2) (17:8) (27:23) (32:2)
letting (23:23)
level (9:2)
like (5:14) (8:9) (16:18) (23:25) (29:6) (35:9) (35:10) (35:11) (35:12) (41:5)
lines (20:20) (32:4) (32:13)
local (13:22) (14:5)
locker (37:1) (37:10)
long (6:11) (8:8) (12:2) (13:17)
longer (9:23)
look (16:1) (20:5) (20:16) (21:24) (28:2) (31:1)
lose (24:7)
lot (19:8) (19:13)

M

made (3:11) (5:16) (15:20)
major (20:6) (20:13)
make (15:13) (19:11) (30:3) (37:2)
making (19:6)
male (34:21)
malone (16:14) (16:15) (16:20)
management (9:11)
manager (12:20) (12:25) (15:1) (15:23) (16:6) (16:15) (20:9) (29:24) (32:1) (32:5) (32:10)
manager's (12:23)
managing (7:25)
manner (3:19) (42:15)
march (21:2)
matter (26:24) (28:13) (42:9)
maybe (6:22)
mayor (20:9) (23:8) (26:7) (26:19) (26:25) (27:16) (29:13) (29:16) (29:18) (30:1) (30:18) (31:23) (32:19) (33:2) (38:10)
mcgillivary (2:3)
mckoon (2:10) (21:7)
mean (9:5) (17:18) (19:14) (19:22) (25:3) (26:12) (28:15) (29:9) (30:10) (36:16) (39:14)
meaning (9:13)
media (39:19) (40:24) (40:25) (41:9)
medical (6:10) (7:6)
meet (13:12) (14:24) (15:4) (15:6) (15:8) (15:9) (17:11) (20:1) (27:5) (27:9)
meeting (13:16) (17:2) (17:6) (20:15) (20:18) (20:23) (21:9) (33:10) (33:13) (33:14) (33:22) (33:24) (34:1) (34:3) (34:8) (34:18) (34:23) (35:16) (36:1) (36:6) (36:10) (36:12) (36:15) (36:16) (36:21) (37:8) (38:12)
meetings (20:4) (22:11) (23:22)
members (23:4) (39:19)
memo (14:15) (14:23) (16:25) (17:14) (18:14) (18:22) (21:10) (21:14) (21:23) (32:11)
memorandum (14:9)
mention (19:6)
mentioned (26:10) (28:3)
merit (10:6) (12:14) (30:8) (30:12) (31:17)
met (5:7) (20:3) (20:17)
middle (1:2)
might (11:6) (23:19)
minutes (5:7)
mistaken (16:14) (28:24) (35:23) (38:12) (39:25)

monday

representing

monday (5:7)	outside (41:17)	procedures (5:10) (10:3) (11:11)
money (39:24)	outstanding (17:21) (18:4) (18:11)	produce (28:9)
montgomery (42:3)	(18:16) (18:20) (19:3)	professional (17:22) (20:12)
months (6:13) (6:14) (23:13) (23:16)	over (12:8) (30:5) (35:9) (39:11)	(21:15) (21:20)
(24:7) (24:8) (25:6) (25:23)	(41:8)	promote (12:4)
morale (10:20)	overheard (26:11)	prompted (16:10) (16:21)
most (5:25)	own (14:18) (17:10)	proposal (25:5)
moving (26:4)	P	proposed (24:13) (24:25) (26:21)
myself (12:15) (34:9)	page (31:3) (31:7) (31:14)	prospective (39:3)
N	pages (42:9)	protective (10:25)
name (4:9) (4:12) (30:7) (34:14)	papers (8:3)	provided (3:14) (3:20)
nature (4:24) (5:6) (5:10) (12:11)	part (8:21) (21:3) (29:20)	public (10:14) (10:18) (10:23)
(26:18)	participate (33:10)	(11:3) (11:8) (11:13) (11:18)
need (3:11)	particular (20:15)	purchased (39:24)
needed (15:18) (19:16)	parties (3:3) (3:17) (42:12) (42:14)	purpose (3:14) (17:2) (17:7) (23:24)
negative (20:16)	party (3:20)	pursuant (1:16) (3:4)
neither (42:13)	penalty (6:2)	Q
never (18:20) (21:21)	pending (39:12)	qualified (25:24)
new (19:8) (23:15) (24:11) (24:13)	people (9:4) (18:19) (19:7) (19:9)	question (4:19) (18:12) (29:11)
(25:7) (25:16)	(20:2) (25:3) (25:4)	(29:12) (32:25) (36:23)
newcomer (19:16)	per (31:16)	questioned (25:5)
newspaper (21:25) (22:4) (22:8)	percent (25:4) (34:20)	questions (3:10) (3:11) (4:17)
(39:9) (39:20) (40:5) (40:7) (40:24)	performance (9:1) (18:21) (18:24)	(8:10) (34:25) (41:21)
next (27:22) (35:16)	(19:14) (19:20)	quite (24:6)
night (28:16)	perhaps (23:12) (33:16) (33:17)	quote (14:12) (14:13) (17:1) (17:15)
nobody (14:21)	period (13:20) (23:15) (24:7) (25:1)	(17:22) (31:16) (31:18)
nor (42:13) (42:14)	(25:15) (25:18) (25:23) (33:11)	quoted (30:12) (40:5)
nothing (4:4) (25:7) (30:11)	periodically (8:25)	R
noticed (20:19)	perjury (6:2)	radio (40:25)
now (6:1) (7:19) (9:8) (9:20) (21:13)	permission (16:19)	raised (25:11)
(28:11) (40:22)	person (38:21)	ran (40:12)
number (24:20)	personal (33:25)	range (12:11)
numbers (8:4)	personnel (8:23) (22:2) (25:24)	rank (7:10)
numerous (18:18)	(29:23) (33:17) (34:5) (34:10) (35:1)	reach (15:12)
O	(35:23) (37:19) (38:6) (38:20) (38:22)	read (4:6) (16:9) (22:4) (22:7)
oath (6:1)	phenix (1:8) (1:19) (2:8) (2:12)	(22:10) (28:5) (34:24)
objections (3:9) (3:10)	(6:17) (7:16) (7:23) (9:10) (10:1)	reaffirming (18:17)
obligated (6:1) (10:1)	(12:6) (13:5) (22:3) (23:1) (23:4)	really (16:19) (34:19)
occasion (22:24) (40:23)	(23:8) (38:25) (39:18)	reason (25:17)
occasions (17:17) (17:18) (18:25)	placed (26:6) (32:18) (33:1) (33:6)	recall (19:2) (25:10) (25:13)
occur (20:24) (33:24)	placing (30:1)	(26:20) (26:22) (29:2) (29:4) (29:20)
occurred (34:23)	plaintiff (1:6) (2:2) (4:13)	(30:10) (30:22) (34:7) (35:8) (35:13)
off (20:17) (29:19)	play (12:20) (23:18) (23:21)	(35:14) (40:4)
offense (30:9) (30:14) (30:16)	point (13:4) (19:11) (23:11) (26:5)	receive (39:8)
(31:15) (31:18) (31:21) (32:21) (33:4)	(32:5)	received (17:3) (28:20)
offenses (30:24)	police (34:11) (34:14) (34:17)	recognize (32:2) (32:12)
offered (3:13)	(34:21)	recollection (21:8)
office (27:22) (32:6) (33:25) (38:9)	policy (23:19) (23:25) (24:13)	recommendation (29:24)
officer (34:11) (34:15) (34:17)	(24:25)	recommendations (30:3)
(34:22)	polite (20:12)	record (4:10) (5:15) (5:16) (16:1)
offices (1:19)	position (7:2) (7:13) (9:21) (11:21)	(31:20)
officially (9:3)	(11:22) (12:21)	recruit (25:24)
one (4:13) (4:16) (4:23) (13:11)	positions (9:14)	recruitment (10:12)
(23:16) (25:9) (26:5) (28:23) (38:21)	positive (17:21) (21:14)	refers (31:14)
(39:12) (40:4) (40:19)	possible (30:4)	regard (13:2)
only (9:4) (12:3) (24:10) (24:13)	possibly (20:12)	regarding (14:12)
(25:2) (25:4) (25:7) (37:6) (39:22)	potential (6:2)	regular (26:2)
(40:4)	power (19:11)	regulation (41:12)
operating (10:3)	prefer (35:17)	regulations (10:4) (10:7) (31:17)
operation (10:17)	prepare (14:15)	(38:20)
operations (7:25) (8:14) (10:22)	prepared (14:21)	reinstated (20:14) (21:1)
(11:2) (11:8) (11:13) (11:18)	present (2:14)	related (29:1)
operative (36:17)	presentations (19:11)	relationship (13:15) (15:14)
opportunity (5:4) (5:20) (20:1)	president (13:13) (13:22) (16:2)	remember (4:25) (6:15) (13:20)
opposed (24:25)	(28:18)	(25:12) (33:22)
opposite (32:17)	pretty (38:12)	repeat (4:18) (18:12)
options (35:11) (38:19)	previous (7:4)	rephrase (4:18)
ordinance (25:8) (26:21)	previously (14:4)	report (30:6) (30:11) (34:5)
organization (13:7)	primarily (19:5) (41:4)	reported (42:7)
organizational (9:16)	prior (14:23) (40:17)	reporter (1:17) (3:7) (4:5) (5:19)
others (4:15)	probably (13:25) (19:8) (21:2)	(42:5)
our (14:8)	probationary (23:15) (24:7) (25:15)	reporters (39:9) (39:20)
out (15:7) (15:17) (19:7) (20:3)	(25:18) (25:23) (26:21)	reporter's (42:1)
(21:25) (22:8) (22:22) (35:11) (37:1)	problem (18:20)	reports (9:4) (9:6)
(37:9) (42:12)	problems (13:19) (21:21)	representing (3:3) (3:17) (4:13)

request

(8:6)
request (15:13) (15:21) (16:11)
required (19:10)
rescue (19:4)
research (19:10)
reserved (3:12)
resign (35:1) (35:3) (35:7) (35:17)
resources (11:6)
respectful (21:21)
response (6:23) (11:10) (35:5)
responses (5:15)
responsibilities (7:24) (8:18)
results (42:15)
retention (10:12)
retire (6:9) (7:16)
retired (6:7)
returning (11:21)
review (5:22) (8:7) (8:9) (12:18)
(37:19)
right (4:17) (7:7) (15:3) (16:4)
(22:20) (26:4) (29:5) (29:22) (32:25)
(37:18) (41:6)
right-hand (8:4)
river (7:7) (40:23)
roberts (2:15) (14:13) (15:23)
(17:3) (29:24)
roland (1:15) (3:4) (4:1) (4:11)
(42:7)
role (12:19) (18:4) (23:18) (23:21)
rule (4:12)
rules (3:5) (3:15) (3:20) (10:3)
(10:7) (31:17)
ruling (3:12)
run (19:3)

S

safety (10:14) (10:18) (10:23)
(11:3) (11:8) (11:13) (11:19)
said (3:6) (3:18) (5:21) (13:11)
(16:17) (20:5) (20:6) (20:18) (20:19)
(27:21) (28:17) (29:16) (37:4) (42:11)
(42:14)
same (32:25) (33:11)
sat (19:24)
saw (16:7)
saying (35:14)
says (14:13) (17:1) (17:15) (17:23)
(31:18)
says obsessions (17:17)
schaitberger (15:1) (15:22) (17:3)
(17:8)
second (17:1) (30:9) (30:13) (30:15)
(31:3) (31:7) (31:15) (32:21)
sent (14:25) (15:22) (16:14)
sentence (17:1)
september (22:1)
sergeant (9:9) (9:20) (18:6) (18:7)
(18:11)
service (10:10) (12:3) (19:4)
services (6:10) (7:6)
set (8:6) (42:12)
several (17:16) (18:24)
shannon (1:16) (3:6) (42:4) (42:19)
shift (20:4)
short (13:16) (28:6) (38:12)
shorthand (42:4)
shortly (13:10) (13:24) (27:14)
should (17:17) (29:25) (30:21)
(36:20)
show (20:21)
shows (25:3)
side (8:5)
sign (4:6) (5:22)
signature (31:3) (31:7)
sir (4:20) (5:13) (5:24) (6:4) (6:6)
(6:8) (6:25) (7:8) (7:12) (7:21) (8:16)
(8:20) (8:24) (9:12) (9:15) (10:5)

(10:8) (10:15) (10:19) (10:24) (11:4)
(11:9) (11:14) (11:20) (11:24) (12:7)
(12:10) (13:1) (13:3) (13:4) (13:8)
(14:6) (14:14) (15:2) (15:11) (16:4)
(16:8) (16:13) (17:9) (17:13) (17:24)
(18:2) (18:6) (18:8) (19:1) (19:5)
(20:25) (21:5) (21:12) (21:18) (22:6)
(22:9) (22:17) (22:20) (23:2) (23:6)
(23:10) (23:17) (24:15) (24:18)
(24:22) (25:2) (25:13) (25:19) (25:21)
(26:1) (26:8) (26:16) (27:1) (27:8)
(27:11) (27:17) (27:20) (28:4) (28:7)
(28:10) (28:23) (29:2) (29:20) (30:2)
(30:19) (30:22) (30:25) (31:4) (31:10)
(31:13) (31:19) (33:5) (33:9) (33:19)
(33:21) (33:23) (34:13) (34:16)
(34:19) (35:4) (35:13) (36:2) (36:5)
(36:11) (36:18) (37:11) (37:16)
(37:17) (37:20) (37:22) (37:24)
(38:17) (38:18) (39:2) (39:5) (39:7)
(40:3) (40:7) (40:11) (40:14) (40:16)
(41:1) (41:4) (41:7) (41:13) (41:15)
sit (15:16)
situation (38:8)
some (5:5) (9:13) (13:4) (23:11)
(24:23)
someone (38:1)
soon (20:7)
sorry (6:22)
sought (39:1)
speak (4:3) (19:17) (35:10) (40:24)
(41:9) (41:18) (42:8)
specific (19:2) (19:18) (21:16)
(21:18) (34:5)
specifically (30:15) (32:14)
speech (41:6)
spend (5:4)
staffing (10:16)
stand (20:10)
standard (10:3)
stared (20:17)
started (6:15) (6:17) (6:23) (13:10)
(13:24)
starting (9:18)
state (1:18) (3:8) (4:9) (32:17)
(42:2) (42:5) (42:20)
statement (25:20) (27:19) (28:3)
(28:8) (28:13) (28:20) (29:7)
states (1:1)
stating (32:2) (32:11) (32:16)
station (13:11) (20:10) (24:4)
(36:24) (37:5) (37:9) (40:8) (40:13)
stay (20:11)
still (22:15)
stipulated (3:2) (3:16)
stipulation and (1:16)
stipulations (3:1) (4:5)
stop (4:17)
street (1:19) (2:4) (2:7) (2:11)
structure (7:11) (9:16)
stuff (37:5)
subject (16:11) (25:16) (28:12)
(29:1) (30:5) (33:12) (40:6) (41:12)
substance (22:12) (38:5)
suggested (17:11)
suit (4:24)
suite (2:4)
supervising (8:22)
supervision (9:11)
supervisor (20:18) (27:12) (30:8)
(31:9)
supervisors (32:8)
support (21:16) (38:13) (38:15)
(38:16)
supposed (34:2)
suppression (8:23)
sure (21:2)

understood

swap (19:23) (19:25) (21:1) (21:9)
sworn (4:2) (6:1) (42:8)
system (10:7) (12:14) (30:8) (30:12)
system's (31:17)

T

tabbed (8:4)
take (8:8) (16:1) (19:10) (21:24)
(28:2) (31:1)
taken (1:15) (3:4) (3:6) (4:21)
takes (25:8)
talk (15:16) (16:19) (16:21) (39:14)
(39:16)

talked (23:21) (23:23) (25:9) (28:16)
talking (16:23) (36:7)
telephone (26:6) (26:19) (26:24)
(27:15) (30:1) (30:18) (31:22) (32:18)
(32:20) (33:1) (33:6)

television (40:8) (40:25)
tell (6:2) (20:7) (34:21)
ten (6:14)
terminated (30:9) (30:21) (35:19)
(36:14) (38:25) (39:10)

termination (25:17) (37:18) (38:13)
terms (7:20)
testified (4:4)

testimony (5:20) (16:6) (17:6)
(37:23) (38:1) (38:6) (38:11)
thanks (29:7) (41:21)
them (8:4) (19:10) (20:10) (36:25)
thereof (42:15)

there's (15:18) (38:19)
they're (9:8) (24:6)
thing (23:25) (38:21)
things (16:24) (19:6) (19:9)
think (21:6) (21:15) (30:21) (35:9)

thirty-two (6:13)
thomas (2:3) (2:10)
thought (15:14) (19:15) (19:24)
through (12:16) (13:12) (16:14)
(24:2) (24:3) (29:14) (29:17) (32:4)
(32:8) (32:13) (38:11) (42:10)

times (11:10)
today (5:21) (22:5) (41:22)
together (28:14)
told (16:16) (20:7) (27:21) (34:4)
(35:18) (37:3) (37:4) (39:13) (39:15)
(40:19)

tom (4:12)
topics (19:10)
trade (19:25)
training (11:15) (11:16) (24:1)
(24:3)
transcript (5:21)

transcription (42:11)
trial (3:19)
troubled (19:19)
true (25:20) (42:10)

truth (4:3) (4:4) (6:2) (42:8)
truthful (28:13)
truthfully (17:25)
trying (25:24)
turn (37:6) (37:11)

two (16:23) (25:2) (25:4) (25:11)
type (27:23)
typed (14:19)
typographical (17:19)

U

ultimate (12:25)
uncomfortable (37:2)
under (6:1) (8:23) (9:2) (9:10)
understand (4:16) (4:19) (5:17)
(5:22) (6:3) (6:23)
understanding (11:25) (12:2)
(12:22) (12:24) (24:12) (32:10) (33:5)
understood (13:18)

union

you'll

union (14:5) (28:19) (32:3) (32:12)
united (1:1)
unless (9:23) (41:16)
unofficially (9:3)
until (19:21)
upon (10:9) (28:11)
used (3:13) (3:19)
usual (4:5)

V

various (8:3) (22:2)
verbal (5:15)
veteran (24:16)
vice-president (14:4)
view (25:22) (29:7)

W

walked (20:7)
walks (20:9)
wallace (2:16) (14:11)
wanted (13:11) (13:13) (35:1) (35:2)
warning (31:5) (35:21) (35:24)
washington (2:5)
wasn't (38:20) (40:7)
waters (1:15) (3:4) (4:1) (4:9)
(4:11) (4:12) (8:2) (14:9) (23:11)
(41:20) (42:7)
way (19:9) (24:16) (24:19) (32:17)
(38:19)
wednesday (1:20)
we'll (5:10)
we're (5:11)
whatever (19:14) (19:25) (32:9)
whenever (21:1)
who (11:25) (24:20) (25:11) (27:2)
(33:15) (34:7) (37:12) (37:25) (42:7)
whole (4:3)
will (5:19)
williams (1:17) (3:7) (39:11) (42:4)
(42:19)
witness (4:2) (42:11)
woodley (2:3) (4:8) (4:12) (41:20)
work (6:11) (7:10) (13:10) (13:17)
(13:24) (19:13) (24:5)
worked (24:20)
working (6:24) (13:15)
written (27:19) (31:5) (32:1)
(35:21) (35:24) (38:20)
wrong (32:24) (40:3)
wrote (32:11)

Y

year (6:15) (7:18) (14:1) (23:13)
(23:16)
years (6:13) (24:21)
yes (4:20) (5:13) (5:18) (5:24) (6:4)
(6:8) (6:19) (6:25) (7:8) (7:12) (8:16)
(8:20) (8:24) (9:3) (9:12) (9:15)
(10:5) (10:8) (10:15) (10:19) (10:24)
(11:4) (11:9) (11:14) (11:20) (12:7)
(12:10) (13:1) (13:3) (13:8) (14:6)
(14:14) (14:17) (14:20) (15:11) (16:4)
(16:8) (17:4) (17:9) (17:13) (17:24)
(18:2) (18:6) (18:8) (18:13) (19:1)
(21:5) (21:12) (22:6) (22:9) (22:17)
(23:17) (24:15) (24:22) (25:19)
(25:21) (26:8) (26:16) (27:1) (27:8)
(27:11) (27:17) (27:20) (28:4) (28:7)
(28:10) (28:23) (30:19) (30:25) (31:4)
(31:8) (31:10) (31:13) (31:19) (33:5)
(33:9) (33:14) (33:19) (33:21) (33:23)
(34:13) (35:4) (36:5) (36:18) (37:11)
(37:16) (37:20) (37:22) (37:24)
(38:17) (39:2) (40:3) (40:11) (40:14)
(40:16) (40:21) (41:1) (41:4) (41:7)
(41:15)
you left (7:14)